

# INFLUENCE OF CSR COMPLIANCE, ESG REPORTING STANDARDS REGULATORY ENFORCEMENT, AND ENFORCEMENT GAPS ON CORPORATE GOVERNANCE IN INDIA

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## ABSTRACT

The distinction of being the first nation to enact mandated corporate social responsibility expenditure by enacting a law on the same under section 135 of the Companies Act, 2013 is unique to India. The regulatory framework was extended over the following decade with SEBI Business Responsibility and Sustainability Reporting (BRSR) framework (SEBI, 2021), BRSR Core (SEBI, 2023), RBI Draft Framework of Climate risk Disclosure (RBI, 2024) or the CCPA Greenwashing Guidelines (CCPA, 2024). All these tools together have put India in the list of most prominent jurisdictions in the world with systematic corporate sustainability governance.

However, there is still a recalcitrant enforcement hole. The sum of total CSR penalties in three-financial years (2022-2025) was almost INR 20 crore as opposed to the total annual obligation of over INR 26,000 crore. A study conducted by the ASCI (2023) revealed that 79 per cent of environmental claims that were made by Indian organisations were deceptive or overstated. The IL&FS; and Hindenburg-Adani are the most damaging governance failures, which happened in organizations that are on record adhering to the standards of disclosure rules.

Critically, this paper evaluates the question of whether the mandatory CSR and ESG reporting regime in India is actually enhancing the nature of corporate governance as it is a sign of a regime change or otherwise and suggests eight possible specific legal reforms based on preexisting statutory authority. The study follows a doctrinal and analytical research design as it uses statutes, SEBI circulars, MCA adjudication orders, Supreme Court judgments, NGT orders and corporate sustainability filings. The three research hypotheses are accepted: CSR compliance has a positive impact on the quality of governance; significant enforcement has a positive impact on the results of governance, the overall architecture of CSR, ESG reporting, enforcement and the gaps in the enforcing mechanism determine the quality of governance.

## CHAPTER 1

### INTRODUCTION

India is the pioneer nation to enact a compulsory corporate social responsibility spending. In the light of the Companies Act, 2013, a statutory requirement was promulgated acknowledging the first time in Indian history a

statutory obligation was imposed on companies that are qualified i.e., those that had a net worth of INR 500 crore or above, turnover of INR 1,000 crore or above, and net profit of INR 5 crore or above, namely, Section 135, in which the obligation was established that a company had to spend at least two per cent of its average net profits on social activities. It was not

a show of symbolism. It was an enforceable law, supported by the board committee, annual disclosure, and ultimately defaulting penalties; it underwent the growth of corporate sustainability governance architecture to very large dimensions during the next ten years that followed the initial CSR mandate. In 2021, the BRSR framework, which replaces the previous Business Responsibility Report by a much more holistic regime of disclosure, was issued by the SEBI in accordance with the Global Reporting Initiative (GRI), the Task Force on Climate-related Financial Disclosures (TCFD) and the UN Sustainable Development Goals. BRSR Core (2023) has 49 Key Performance Indicators that are mandatory third-party assured at top listed entities. RBI released its Draft Climate Risk Disclosure Framework in 2024 also expanding the sustainability governance to the banking industry. The CCPA gave indication to the Greenwashing Guidelines in October 2024 – the first statutory ban on false environmental representations against India. However, below this impressive edifice, there remains a very disturbing loophole. The ineffectiveness of the Indian statutory framework is not binding, but enforcement: the penalty frameworks, verification, institutional ability, and inter-regulatory interaction to bring the framework to practical effect. The paper will address this gap with a focal question, in what extent is CSR compliance and ESG reporting really enhancing corporate governance in India and what does the law need to be changed to effect such improvement in a manner that is sustainable and effective.

## CHAPTER 2

### ANALYSIS OF THE EXISTING LAW

#### Overview of the Legal and Regulatory Framework

The sustainability governance system in India is multi-layered and spreads out across central laws and regulations of SEBI, RBI standards and regulations, and the consumer rights law and environmental laws. Such are the main statutory provisions as: sections 134, 135, 166, 447

and Schedule VII of the Companies Act, 2013; the SEBI Act, 1992; the SEBI (LODR) Regulations, 2015 as amended; the Consumer Protection Act, 2019; the Environment. Protection Act, 1986; the National Green Tribunal Act, 2010; the Carbon Credit Trading Scheme, 2023 and the Digital Personal Data Protection Act, 2023.

#### Constitutional Provisions

1. Article 19(1)g: The right to engage in the carrying on of trade or business; Article 19(6): Only allows restrictions in the public interest that are proportionate in nature – the constitutional grounds of Section 135.
2. Article 21: Right to life, understood in a broad sense of covering the right to a healthy environment, provides the support of the obligation to the disclosure of the environment to be mandatory.
3. Article 51A(g): imposes an obligation on citizens to conserve and enhance the natural environment – at long last explicitly against corporate directors by the inclusion of an obligation in Section 166(2) of the Companies Act. Article 14 and 15: Equality clauses that shall be used to support the responsibility of governing bodies and lack of discrimination commitments by all regulatory systems.

#### Section 135 – Core CSR Mandate

The section 135(1) specifies that all the qualifying companies should form a CSR Committee with a minimum of three directors, one of them being an independent director. Section 135(5) requires the company to spend at least two per cent of average net profits in three previous financial years. The 2021 amendments added a section 135(7), which gives financial penalties in case of default A company penalty of two times the amount of the amount left or INR 1 crore (whichever is lesser), and officer penalties of one tenth of that penalty or INR 2 lakh (whichever is lesser). Although the quantum of the penalty is grossly

insufficient in the case of major companies, this was the provision that changed the CSR regime into a soft requirement to a bind one.

### Section 166 – Directors' Environmental Duty

Section 166(2) states that a director must act in good faith and so the best interest of the company to ensure it promotes the company objectives to the overall benefit of its members and the best interest of the company, its employees, the shareholders, the community, and in the safeguarding of the environment. This is highly significant: it establishes a statutory fiduciary duty towards the directors directed at putting environmental and community interests into consideration. Under circumstances where a director is aware of a BRSR filing that includes false environmental statements which are approved by a director, the director may be in violation of Section 166(2) and in an event where a director is methodical in knowingly and ascertained acts of corporate fraud under Section 447, a punishment involving a maximum of ten years of imprisonment and fines

### SEBI BRSR and BRSR Core Framework

On May 10, 2021, SEBI Circular introduced the BRSR, which is organized around nine National Guidelines on Responsible Business Conduct (NGRBC) Principles that are divided into ethics, environment, employee welfare, stakeholder engagement, human rights, and consumer data privacy. The framework substituted narrative revelations with structured quantitative KPIs of GHG-related emissions, water utilization, waste generation, as well as safety rate of employees. BRSR Core added 49 KPIs on a steady glide path required to have the eyes of the third party in FY 2023-24: the top 150 KPIs, the top 250 KPIs, the top 500 KPIs, and the top 1000 KPIs in FY 2026-27.

### CCPA Greenwashing Guidelines, 2024 and RBI Climate Framework

The decision of October 2024 has made greenwashing comprehensive: it includes such ambiguous terms as eco-friendly, green,

sustainable, or carbon-neutral that cannot be scientifically proved; positive disclosure selectivity, i.e., excluding negative effects of lifecycle effects; misleading references to third-party certification. Fines up to INR 50 lakh in case of recurrence of violation and defaulting officers are imprisoned. The 2024 Draft Climate Risk Disclosure Framework prepared by the RBI obliges commercial banks with substantial commercial banking operations with schedules to disclose TCFD standards aligned thematic areas of governance, strategy, risk management, and metrics among the entities that finance virtually all other corporate activity in India.

## CHAPTER 3

### PRIMARY AND SECONDARY SOURCES OF LAW

#### (i) Primary Sources

The main legal frameworks that regulate corporate sustainability in India are: the Companies Act, 2013 (Sections 134, 135, 166, 447, Schedule VII); the SEBI Act, 1992 and LODR Regulations, 2015 as amended; the Consumer Protection Act, 2019 and CCPA Greenwashing Guidelines; and the Environment Protection Act, 1986; there is the National Green Tribunal Act, 2010; the Carbon Credit Leading court cases are the primary sources which are binding: Satyam Computer Services (2009-10), SEBI v. Indian Medical Association v. Sahara, Justice K.S. Puttaswamy, (2012), and Justice K.S. Puttaswamy, (2017). Union of India (Patanjali, 2024).

#### (ii) Secondary Sources

Among the sources used are SEBI circulars and master circulars on BRSR (2021, 2023, 2024-25); MCA adjudication order (FY 2022-23 until FY 2024-25); and other academic sources such as Gaikwad (2024), Kumar and Singh (2022), Chakrabarti and Bhattacharjee (2023), and Bose (2023); and comparative frameworks such as: the EU CSRD, UK Corporate Governance Code (2024), and US SEC Climate Disclosure Rules (2024).

## CHAPTER 4

### ISSUES AND CHALLENGES IN ACHIEVING EFFECTIVE CSR AND ESG GOVERNANCE

#### Gap 1 – Inadequate Penalty Quantum

The most important enforcement gap is the problem of the quantum of the penalty. Aggregate CSR penalties over three financial years were estimated to be INR 20 crore as compared to qualifying aggregate obligations exceeding INR 26 000 crore per year 4.96 below 0.08 per cent. of the aggregate obligations. The absolute INR 1 crore corporate penalty limit as specified by section 135(7) does not increase with the size of the company. Under a large company with the average net profits of INR 5,000 crore and the CSR obligation of INR 100 crore, the highest fine in case of total non-compliance is one per cent of the needed amount. The method of the EU CSDDD of imposing up to five per cent of the annual turnover across the globe shows the global standard of effective deterrence.

#### Gap 2 – Absence of ESG-Specific Assurance Standards

Financial audits have an extensive framework: ICAI Standards on Auditing have detailed result requirements in terms of scope, evidence, documentation and reporting; statutory auditors are personally professionally and legally liable in regards to their opinions; NFRA is an independent controller. There is no similar framework of the ESG assurance. The assurance requirement in relation to BRS Core is now just subject to the corresponding SEBI-ISF Industry Standards of December 2024 that do not have any such equivalent professional liability. An ESG assessor that makes an inaccurate assurance opinion does not suffer consequences comparable to that of a statutory auditor that issues a false audit opinion.

#### Gap 3 – No Integrated Greenwashing Investigation Mechanism

BRSR of governance by SEBI and consumer advertisement greenwashing of CCPA. There is

no cross-regulatory investigative mechanism on which the BRSR disclosures of a company are inconsistent with the environmental claims of the company at consumer level. One company who performs false environmental claims in their BRSR and consumer advertising has absolutely no similar enforcement procedure between SEBI and CCPA processes, which cannot provide information, plan strategy, and generate joint enforcement effects. This regulatory arbitrage allows the companies to make disclosures in a way that is independent of each one of the regulators as long as the general picture of environmental performance is inaccurate.

#### Gap 4 – Limited Supervisory Capacity

The BRSR reviewing capability of SEBI is reactive not proactive. Although since FY 2022-23 this quality of disclosures, which were already mandatory for over 1,000 listed entities, SEBI has not in a public manner begun enforcing action in respect of such failures of BRSR disclosures in particular rather than unilaterally non-filing. Assessing the substantive accurateness of an ESG reporting by more than 1,000 firms takes expertise in environmental science, social performance measurement, and governance measurement that is qualitatively dissimilar to the financial analysis techniques that constitute the institutional core competencies of SEBI

#### Gap 5 – ESG Rating Provider Governance

The ESG Rating Provider framework proposed by SEBI in July 2023 provided framework that brought about structural changes to the hitherto unverified ERP market. Nonetheless there are still serious governance lapses. The issue of various providers giving differing ratings to a single company will be a factor that compromises utility of governance hence will allow companies to pick and choose which rating to cite. More essentially, ERPs that offer advisory and improvement services to businesses also rate the very businesses they are structural conflict of interest similar to the pre-Sarbanes-Oxley conflict of audit and consulting services in large accounting firms.

## Constitutional Tension Between Accountability and Corporate Autonomy

The constitutional perspective of India gives the power as well as the boundaries of the corporate sustainability governance. Article 19(1) (g) ensures the right to conduct business whereas 19 (6) allows reasonable restrictions in the interest of the populace. The CSR requirement on section 135 is constitutionally valid as a reasonable restriction in the interests of the society at large by providing a significant stake in the needs of social conditions of the environment in which business operation is facilitated. But the conflict of corporate independence and compulsory sustainability responsibility dictates that enforcing systems be commensurate an imperative that the graduated structures of penalties meet more satisfactorily than the established fixed limits.

### CHAPTER 5

#### CASE LAW AND JUDICIAL PRECEDENTS

##### Satyam Computer Services Ltd. v. Union of India (2009-10)

In the variables to be discussed, the third variable is governance compliance versus governance substance and the starting point to consider in developing that variables correlation is the Satyam fraud. The fact that Satyam had been in formal compliance with the requirements of Clause 49 governing board independence, and the fact that Ramalinga Raju himself admitted to fabricating accounts over the past nine years, produced devastating effect with the understanding that structural compliance is no substitute to the actual board independence. The radical governance restructuring reflected in the Companies Act, 2013 was a direct result of what the Supreme Court was forced to do to reconstitute the Board; in an unprecedented intervention into the governance of companies. The principle of governance that Satyam verified, the absence of substance in the form of structure, governance without accountability, is equally true of the ESG disclosures: a formally compliant

BRSR filing is capable of systematically misrepresenting sustainability performance in the same way the company financial reports did the same to its financial situation.

##### SEBI v. Sahara India Real Estate Corporation Ltd. (2012)

The decision of the Supreme Court affirmed the broad, quasi-legislative, quasi-judicial and quasi-executive authority of SEBI in regard to both the investor protection duties, both financial and non-financial disclosure obligations. This ruling offers the constitutional power of SEBI gradually expand the BRSR framework, provide BRSR Core assurance requirements and oversee the work of ESG Rating Providers without needing specific parliamentary legislations to implement each program..

##### Indian Medical Association v. Union of India – Patanjali Case (2024)

The Supreme Court believed that misleading advertisements that play on consumer weaknesses are serious wrong, which infringe on the right to health and consumer rights, and that the personal responsibility was on the directors and promoters who participated in false health claims knowing fully their actions were false do not affect anyone. The corporate administrative implication concerning the ESG disclosures is straightforward: when a director can be personally liable when it comes to authorising false health claims knowingly, the same principle can be applied with equal validity to false environmental claims in BRSR filings, sustainability reporting, or presentation to investors. This precedent is the main pillar of the proposal of the reform of personal director responsibility concerning ESG disclosure failure.

##### IL&FS; Group -NCLT Mumbai Directions (2018-2019)

The paradigmatic case of the failure in the governance in a systemically important firm is the example of the collapse of the IL&FS. IL&FS; received AAA credit ratings, had advanced governance system and had published

sustainability reports. It failed due to years of fraudulent financial reporting, suppressed audit discoveries, board capture by management and regulatory oversight lapses that were used concurrently in the MCA, SEBI, and RBI jurisdictions. In a fundamentally misleading way, IL&FS; historical sustainability documents were actually reporting on the social investment undertakings but in essence failed to convey the overall quality of governance in an institution that was committing systematic fraud, which goes to show that ESG reporting without full governance audit cannot detect root governance malpractices.

### **MCA Adjudication Orders (2022-2025)**

According to governmental statistics, the punishment was Dh597 crore in FY 2022-23 (6 companies), INR3.32 crore in FY. 2023-24 (11 companies), and INR 13.65 crore in FY 2024-25 (13 companies). Personal pecuniary liability Inre Takraf India Pvt. Ltd. (ROC Chennai, 2023) decided that directors can be subjected to personal pecuniary liability notwithstanding a later cure of CSR default. In affirming Smith N Smith Chemicals Ltd. vs. Smith N Smith (2023) affirmed that the ignorance of statutory CSR was no defence - the fiduciary obligations imposed in 166 of the Companies Act did not allow ignorance as a defence. All these principles are naturally applicable to the ESG disclosure failures.

### **CORPORATE CASE STUDIES**

#### **Tata Group – Integrated Governance Model**

Tata Group Incorporated Governance Model. The Tata Group is a good example of how proper integrated CSR governance can appear. Since the Tata Sons were owned by Tata Trusts, which controlled about 66 per cent of the company, a large share of the corporate profits goes straight into the charitable and development operations regardless of the official CSR regime. The BRSR reports of Tata Steel show the direct connections between community development CSR as well as the responsibilities caused by the existence of its

mining and steel making business - the social investment will go to the populations that are the most impacted by the actual environmental footprint of the company. ESG KPIs are implemented in executive compensation in important Tata Group companies, offering remuneration rewards that are mostly lacking in the larger Indian business environment.

#### **Infosys – ESG Reporting Leadership**

Infosys makes its sustainability report compatible with the GRI Standards and TCFD recommendations and BRSR requirements at the same time stretching the requirements of SEBI in scope and verifiability far above the requirements stipulated by the agency. The company embraced scientific-based goals to cut down on emissions which resulted in the company being carbon neutral three years before it became compulsory with important ESG data being verified independently by Deloitte Haskins and Sells. The 2019 whistleblower scandal has shown how governance can be resilient: the independence of the board allows investigating authentically and the resolution confirmed that companies that have authentic governance infrastructure are better placed to handle crises than formal compliance

#### **Adani Group – Governance Transparency Gaps**

Adani Group companies lost more than USD 100 billion in market capitalisation in days, following the release of the extraordinary governance crisis report of January 2023 by the Hindenburg Research. The episode shed light on the fact that BRSR filings, which were duly filled, with respect to particular KPIs, were not the type to shed light on the beneficial ownership arrangements, and otherwise particular-party relations, which are subject to the allegations. The result of this governance lesson was industry-specific regulation of the disclosure of related parties and disclosure materiality in the LODR Second Amendment Regulations 2023, which came shortly after this lesson.

#### **Hindustan Unilever and Godrej – Consumer Greenwashing**

urf Excel Easy Wash, which is claimed to be 100 per cent natural yet has used synthetic surfactants and godrej Consumer Products, in which soap products are claimed to be biodegradable and environmentally friendly, are the most widely reported instances of greenwashing in Indian consumer markets. The two cases were both established before the 2024 CCPA Guidelines and processed under the ASCI self-regulatory nature of the complaint process, where the former had the advertisements discontinued without any fines, and the directors who opposed the false statements were not personally responsible. These cases, now being cases under CCPA Greenwashing Guidelines and the Patanjali case law of a personal director liability, would receive far more meaningful consequences.

### **CHAPTER 6**

#### **THEORETICAL FRAMEWORK AND JURISPRUDENTIAL FOUNDATION**

**Stakeholder Theory** The stakeholder theory by Freeman offers theoretical basis of a mandatory CSR and ESG governance. This tenet that corporations are not solely accountable to the shareholders, but to all the stakeholders that are impacted through their operations such as the employees, society, suppliers, future generations, the natural environment among others directly elucidates the legal mechanisms that support accountability to these stakeholders. The direct legislative manifestation of the stakeholder theory on the Indian company law is the CSR requirement as laid out in Section 135 and the environmental responsibility of directors contained in Section 166(2). The wide-ranging prescriptions in Schedule VII give the companies the ability to match CSR with its material societal and environmental effects, yet the flexibility also introduces the problem of technically compliant expenditure on activities that have no impact on the actual footprint of the company a structural weakness that is being remedied by the mandatory impact assessment

### Agency Theory and Deterrence Theory

Normal agency theory is concerned with harmonizing incentives tied to the management with those of the shareholders. ESG governance provides an expansion of this framework by acknowledging that there exist governance risks entailed by information asymmetry between corporations and their overall stakeholders, which necessitates mandatory disclosure burdens. It is institutional reaction to this very discrepancy: in the absence of standardised tested non-financial disclosures, investors and regulators are unable to judge the sustainability risk that is increasingly becoming the determinant of corporate value and social impact. The deterrence theory is used to determine why there exists a disparity between the formal requirements of certain regulations by India and the results of governance. Any non-compliance is rational where the cost it may incur is less than the benefit incurred. The decision to comply rationally when CSR penalties are trivial when compared to possible savings would be non-compliance where the maximum penalty is nearly 1 crore and the potential saving is around 100 crore on a large firm. The eight reform suggestions included in this paper are to refocus this deterrence calculus by increasing the quantum of penalties, lengthening the personal liability, and enlarging verification to make non-conformity more difficult to hide. Deterrence does not just work by how much of the penalties is actually imposed but rather by making it apparent that detection and prosecution occur any time a particular violation is noted- combination of proactive capacity to supervise and coordination between cross-regulations enforced by different regions and individual responsibility among directors which are not held in India

### Mimetic vs. Genuine Institutional Compliance

The institutional approach poses a serious question as to whether the adoption of the ESG in India is a manifestation of a deep

governance change or an attempt at mimicry whereby organisations are taking up disclosure formations due to their obligation to such formations and not due to the cultural and operational change it brings about giving such formations true governance significance. The data on the Indian corporate world is a dichotomous image. ESG governance is indicative of true strategic integration among big, globally flavoured firms that are competing to attract institutional capital - Tata, Infosys, Wipro etc. Within the much larger pool of that group of qualifying companies where the main disclosure audience is composed principally of domestic investors, the BRSR filing is often a compliance ritual that generates formally sufficient, but substantively en routes disclosures. To seal this gap, it is necessary, first and foremost, to have a stronger enforcement, but also build a culture of governance where ESG accountability is perceived as an inseparable part of responsible business leadership a cultural change that legal education, institutional investor stewardship, and board diversity demands must make contributions.

### COMPARATIVE AND INTERNATIONAL PERSPECTIVES

The most recent innovation relevant to this reform agendas in India is introduced into the EU Corporate Sustainability Reporting Directive CSRD that takes effect January 2023. First, the principle of materiality of the double materiality has two facets: financial materiality which entails disclosure of how ESG issues pose financial risks to the company, and impact materiality which entails immense negative and positive impact of the company on the environment, society and economy, both of which cannot be found within the BRSR framework in India. Second, universal verification serves as a foundation because there is a mandatory independent reporting of sustainability reports. Third, significant deterrence to materially misreport on the material sustainability is provided by the existence of penalties of up to five per cent of

annual global turnover that India does not have with a fixed-maximum penalty system

There is a comply/explain structure of the UK Corporate Governance Code (2024), which mandates substantive board explanation of any nonconformance with provisions of governance. The UK Stewardship Code 2020 establishes regulatory responsibility towards ESG in institutional investors of the market, not through the imposition of regulation but through market forces to enhance governance. As archetypal of securities regulators, the US SEC climate disclosure rules, which adopted in March 2024, affirm that institutional capacity and authority to impose climate disclosures via statutory mandates are not limited to SEBI and its affirmed power under the Sahara judgment.

The integrated reporting concept of the South African King IV Corporate Governance Code, which reflects the financial, environmental, social and governance information as parts of a unity of meaningful narrative of value creation, give India a long term perspective of how BRSR compliance can evolve into a non-separable part of the overall dimensionality of annual corporate reporting. The Brazil case of the successful experience in the expansion of assurance and institutional investor stewardship codes is similar to the reform trajectory under discussion in this paper in terms of India. The risk-prioritisation logic covered by China in a sector-based mandatory disclosure of heavy-pollution industries before expanding it to cover other types of ESG disclosures is congenial to the risks that India may also take in creating sector-specific supplements to BRSR on mining, chemicals and real estate, and financial services.

- The actual business applicability of EU CSRD to the Indian firms is growing at a noteworthy pace. Through their EU customers, Indian companies that are involved in exporting their products to the EU markets are hit by the CSDDD supply chain due diligence requirements. The EU institutional investors of the Indian

companies use the CSRD-oriented ESG evaluation criteria to steer their due diligence efforts. Banks in the EU that finance Indian companies use the requirement of climate risk assessment in their terms of loan. The domestic ESG governance reform agenda in India is thus, not just a domestic policy issue, but also a commercial competitive issue in the global economy that India aims to lead. Domestic reform agenda and international engagement the G20 Sustainable Finance Working Group and ISSB consultations go hand in hand: with a greater domestic enforcement structure, India will be seen as a more credible leader on the sustainability governance matters on the international stage.

Reform Section 135(7) sanctions to a progressive percentage of profit basis - two to five per cent of the unutilised CSR obligation or triggering average net profit - notwithstanding the INR 1 crore absolute limit, and increase foot to uphold officer liability to disqualification of directorship under Section 164 in case of first repeat default. Mandatory accelerate BRSR Core to all the 1,000 top companies by FY 2025-26 and amend. LODR penalty wording to require 0.1 per cent of turnover (minimum INR 25 lakh) on material BRSR disclosure misrepresentation which is separate and in addition to the current non-filing penalty. Establish statutory ESG Assurance Standards under ICAI, modelled on ISAE 3000, and extend NFRA's jurisdiction to cover registered ESG assurance providers, creating professional accountability for sustainability assurance opinions equivalent to that applicable to statutory financial auditors.

- Introduce statutory ESG Assurance Standards in ICAI, including modeled on ISAE 3000, and have NFRA extend its jurisdiction to registered ESG assurance providers, and develop professional accountability of an opinion on

sustainability assurance standards on equitable basis as statutory financial auditors.

- Establish a cross-regulatory ESG Enforcement Coordination Committee of the SEBI, MCA, CCPA, RBI and MoEFCC, with an established information sharing and joint enforcement program and a special SEBI-CCPA cross-referral program over greenwashing cases.
- MCA guidance representing disclosures of environmental duty under Section 166(2) (environmental) and fraud under Section 447 as fit deliberate misrepresentation by breaching the disclosure of misstatements governed by this subsection will represent a personal director liability as to false claims of sustainability, in line with the Patanjali precedent.
- Implement dual materiality evaluation into BRSR model where both disclosure of how ESG issues influence the company, and how the company influences the society and environment, (impact and financial materiality respectively), will be introduced and aligned for EU CSRD model.
- Set up a publicly searchable digital ESG data centre that consolidates BRSR filings, BRSR Core assured KPIs, CSR annual reports, BRSR Form CSR-2s and third party assurance reports in unified and machine-readable format.
- Revise a detailed SEBI Stewardship Code on institutional investors based on the UK 2020 Code and include mandatory disclosure of ESG engagement activities, material stewardship performance and voting on an ESG-related resolution.
- Consensus extensively with religious constituencies, minority groups, tribal leaders, women and organisations as well as civil society ahead of any significant governance reform in an attempt to create social trust and in making sure that CSR and ESG systems have common good to

those populations who will be most impacted by corporate action

## CHAPTER 7

### CONCLUSION

India has achieved something very impressive in the sphere of corporate sustainability governance. Within less than ten years, the country has constructed a multi-layered system of governance that most of the developed world is still grappling to achieve mandatory CSR spending with board level controls, a wholesome framework on ESG disclosure on a consistent global platform, gradual mandatory third-party assurance requirements, and, in 2024, the first law on statutory corporate greenwashing. These are not paltry accomplishments. They constitute a paradigm shift in the law of aboriginal corporate accountability to the community, its environment and to its stakeholders.

However, as we have continually established in this paper, statutory review, case law review, and enforcement statistics, case studies of corporations, the presence of this architecture has not ensured its efficiency. The binding factor is enforcement. The penalty systems, audit measures, institutional capability and inter-regulatory co-ordination required to bring the framework to life. A law wishful to be achieved. The aspirations in India have been aptly stated in statute and circular. To make them real, it requires the enforcement structure.

All the three hypotheses have been proved right in the research. The CSR compliance does affect quality of corporate governance – the mandatory regime has not only raised accountability in the board level but it has also established enforceable fiduciary responsibilities, which were previously nonexistent prior to the year 2013. A certain degree of regulatory enforcement does have implications on the quality of governance, the relationship between the strength of enforcement and the quality of governance is strong in all the case studies that have been

studied. And all of these combined architecture of CSR compliance, ESG reporting, enforcement mechanisms, and enforcement gaps, collectively dictate the quality of governance in such a way that none of the aspects can actually give a full explanation of the problem and address the issue fully

The eight reform suggestions proposed in this study have its basis on the current statutory power. They all do not need new primary legislation. All these would be possible in the form of special amendments to Section 135 (7) of the Companies Act, SEBI LODR Regulations, ICAI standards, and CCPA enforcement procedures. The principles have already been realized in Indian courts: Satyam has made the absence of structure accompanied by lack of substance government without accountability, Patanjali made it clear that personal director liability is fully applicable to misleading statements, and Sahara made it clear that the investor protection requirement of SEBI is the ultimate covering of non-financial disclosures. The only left is the regulatory and legislative establishment to implement the same into active enforcement through consistency and proportionality.

As in the governance practice in Tata and Infosys, the corporate sector in India has shown that best practice ESG governance is indeed possible within the Indian conditions. The changes that have been suggested in this paper are aimed to make sure that what best companies have as a voluntary act is made to all qualifying companies as a necessity. India has the means to achieve all the aspects of the continuum of compliance to accountability, reporting to governance, and aspiration to achievement. The issue is will the corporate governance institutions dare to take it.

### **Gender and Diversity Governance in the CSR and ESG Framework**

Gender justice and corporate sustainability governance are some of the most significant areas in the ESG framework of India. The legal accountability of gender governance of

Companies Act obliging one of the women directors in qualifying boards and BRSR prescribing gender pay ratio disclosure, women representation in various levels of managerial leadership and maternity benefit and paternity benefits coverage provide a legal framework of gender governance accountability that goes far beyond the tokenism of compliance that marked Indian corporate governance previous to 2013. Principle 3 of BRS demands that the number and proportion of women in all levels of the organisation, gender pay gap, proportion of employees who experience maternity and paternity benefits systems, and the number of sexual harassment complaints received, disposed and pending in the POSH Act, 2013 is disclosed.

The governance issue is converting the disclosure accountability into improvement in legitimate governance. Coercive reporting of gender metrics generates the data field where institutional investors and regulators can spot and deal with the companies that do not meet the gender governance requirements. However disclosure, without the commercial effects that occur when institutional investors are active on gender governance, or the regulatory effects where BRSR disclosures expose patterns of systematic gender discrimination may not have the governance change it shows is required. The gender governance reform agenda comprises: SEBI guidance around the manner in which institutional investors should interact with portfolio companies that disclose persistent gender pay gaps; MCA clarification over how the community interests obligation under Section 166(2) of the MCA is to apply in respect of gender equality within the workforce; and BRSR improvement where companies are expected to also disclose specific and time-bound gender equality objectives alongside their existing performance data.

### **Tribal and Indigenous Community Rights in CSR**

The constitutional provisions of Scheduled Tribes in India include the Fifth and Sixth

Schedule safeguard and the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) that provides a special legal structure on the CSR activities in tribal regions not properly covered by conventional Section 135 governance structure. The mining companies, infrastructure developers, large-scale agricultural enterprises, and any other company operating in tribal areas are liable to extra-consultation requirements under PESA and the Forest Rights Act, 2006 that ought to govern the CSR strategy of the company and its BRSR disclosures regarding the community engagement. Another mining firm that uses all its CSR money in tribal-affected locations in promoting sports instead of restoring mining afflicted places may technically comply with the requirements in Section 135 and yet fail the entire population that is most vulnerable to its activities. MCA and the Ministry of Tribal Affairs ought to work together to come up with a guide to explain that the CSR disbursements cannot replace the PESA statutory rights safeguards and BRSR reporting on community engagement must particularly specify how compliance with PESA and Forest Rights Act requirements.

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